THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 280 of 2003
(Under Section 173 of the Motor Vehicles Act)

District: Almora.

The New India Assurance Co. Ltd.,
Through its Divisional Manager,
Opposie Judgee Court, Nainital Road,
Haldwani (Nainital), …….. Appellant,

Versus

1. Smt. Hasina Begum w/o late Sri Yunus,
2. Mohammd Sayeed s/o Late Sri Yunus,
   Aged about 16 years (minor),
3. Mohammad Wahid s.o. late Shri Yunus,
4. Mohammad Aslam S/o late Shri Unus,
   Aged about 9 years,

Respondent No.2 to 4 minors through their mother and natural guardian Smt. Hasina Begum, all residents of village Sarna Garden, Ranikhet, Tashil and District Almora.

5. Mohammad Naseem s/o Sri Ali Hussain,
   r/o Gulzar Building, Ranikhet.

……Respondents.

Sri T.A. Khan, Advocate, for appellant,
Sri Zafar Siddique & Dinesh Chauhan,
For respondents.

3rd September, 2004.

Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been filed against award of compensation dated May 7, 2002 passed by Motor Accident Claims Tribunal, Almora in Motor Accident Claim Petition No.16 of 2001.

The accident in question occurred on 31.1.2000 near Bajeena, Patwari Circle Bamsyun when Mohd. Yunus traveling in truck No.UP 01/3409 sustained injuries and later on died in the hospital.

The learned Tribunal framed as many as 5 issues in the case and held that the accident took place due to rash and negligent driving of the vehicle in question due to which Mohammad Ynus died, the vehicle was duly insured with the appellant and the driver had valid driving license on the date of accident. After assessing the income of the deceased, the Tribunal made one-third deduction likewise for lumpsum payment being made and awarded Rs.3,40,000/- as compensation to the respondents.

We have heard the learned counsel for both the parties and have considered the matter.

The learned counsel for the appellant urged that the learned Tribunal did not consider certain important aspect of the case and above all that the deceased was traveling in the truck unauthorisedly and was entitled to compensation on the basis of no fault liability.

The grounds raised in the memo of appeal are that the offending vehicle was not holding a valid driving license and that the deceased was a gratuitous passenger in the truck in question.

As regards the contention that the driver of the offending vehicle was not holding a valid driving license, the argument is without force. There is clear-cut finding of the Tribunal that the concerned driver was holding a valid driving license on the basis of evidence before it. A reference may be made to the case of National Insurance Company Limited vs. Swaran Singh and others, 2004(3) Supreme Court Cases, 297 in this respect.

Now coming to the question of gratuitous passenger, we are not inclined to accept that the appellant is exonerated from its liability to pay compensation, in view of the settled law laid down by the Apex Court in the case of National Insurance Company Ltd. Vs. Baljit Kaur and others, (2004) 2 SCC 1 wherein it has been directed by the Apex Court that the insurer shall satisfy the awarded amount and recover the same from the owner of the vehicle simply by initiating a proceeding before the executing court without filing a separate suit. Following the ratio to meet the ends of justice, we direct the appellant first to satisfy the entire decretal amount before the Tribunal concerned and then it may file objections before the executing court, if it so desires. The Tribunal after affording opportunity of hearing to the owner/insured and the appellant insurance company on the matter in issue i.e. whether the deceased was a bona fide or a gratuitous passenger, shall decide the point in accordance with the provisions of the Motor Vehicles Act. In case the appellant succeeds, the appellant may recover the same from the owner of the vehicle.

The appeal is disposed of finally with the aforementioned observations. No order as to cots.

The amount in deposit with this Court be remitted to the Tribunal concerned.

(B.S.Verma, J.) (P.C. Verma, J.)

SPA/3.9.04